



February 19, 2019

February 2019 Special Immigration Alert

USCIS Will Reinstate Premium Processing for All H-1B Petitions Filed on December 21, 2018, or Earlier

U.S. Citizenship and Immigration Services (“USCIS”) [officially announced](#) that it will resume accepting premium processing of **all H-1B petitions filed on December 21, 2018, or earlier** that are currently pending adjudication with the agency as of February 19, 2019. These H-1B petitions, along with H-1B cap petitions filed in 2018 for fiscal year (“FY”) 2019, cap-exempt employers, and H-1B extensions filed for the same positions with the same employers are eligible for premium processing. **Premium processing for all other H-1B petitions filed after December 21, 2018, and for those to be submitted for FY 2020 H-1B cap filings is not available at this time.**

Upon payment of an additional \$1,410 filing fee, premium processing allows a petition to be adjudicated within 15 calendar days after it has been received by USCIS. With current H-1B adjudication times taking approximately eight to 12 months, petitions requiring expeditious approval due to (i) the maintenance of H-1B ongoing work authorization; (ii) other government benefits relying on H-1B status maintenance, such as state driver’s licenses; and (iii) international travel requiring new H-1B visa issuance before being allowed to reenter the United States are several examples of why premium processing must be considered. Depending on each company’s internal policy, premium processing may be paid by either an employer or an H-1B employee.

We will keep you posted if USCIS allows reinstatement of premium processing for all other H-1B petitions.

USCIS Finalizes Rule on H-1B Cap-Subject Petitions; No Registration Process for FY 2020 H-1B Cap Lottery

On December 3, 2018, U.S. Citizenship and Immigration Services (“USICS”) proposed a new rule would significantly change how the agency will process H-1B cap-subject petitions for the annual H-1B cap lottery. [The final rule](#) was published at the end of January 2019.

The final rule makes two significant changes to the H-1B visa lottery process: (i) it adds an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions, and (ii) it reverses the order by which USCIS will select petitions under the H-1B cap and the advanced degree exemptions. The final rule will become effective April 1, 2019.

The electronic registration requirement of the final rule **will not be implemented for this year's FY 2020 H-1B cap lottery** in order to give USCIS enough time to properly implement and test the new electronic registration system. The suspension of the electronic registration requirement for this year's H-1B cap lottery means that H-1B cap petitions being prepared for this year will be filed as they have been for the past several years.

The final rule's other change is the reversal of the H-1B cap lottery processing order. Traditionally, USCIS first selects 20,000 petitions that are eligible for the U.S. master's degree cap. After selecting the first 20,000, USCIS takes the non-chosen U.S. master's degree cap petitions and adds them to the remaining H-1B petitions to select the remaining 65,000 under the regular H-1B cap. Under the final rule, USCIS will reverse the order and select the first 65,000 under the regular cap and then pick the remaining 20,000 under the master's degree cap. USCIS believes that this order change will increase the chance of keeping in the United States those H-1B qualified candidates with a master's degree or higher from a U.S. university. Specifically, H-1B beneficiaries with a U.S. master's degree or higher will have a 16 percent higher chance of being chosen for a visa under this order change, compared with how the H-1B cap lottery was previously implemented. Therefore, approximately 5,000 more H-1B cap lottery beneficiaries with a U.S. master's degree or higher will have a greater chance of obtaining a visa.

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